

REMARKS

Claims 1-14 are currently pending in this application, with Claims 1 and 9 being the independent claims.

In the Office Action, Claims 1-6, 9, and 12 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Eklund* et al. (NPL: IEEE C802.16-02/05 “A Technical Overview of the WirelessMAN™ Air Interface for Broadband Wireless Access”).

Claims 7, 8, 10 and 11, are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Eklund* in view of *Mizell* et al. (U.S. Pub. No. 2002/0077097).

Regarding the § 102(b) rejection, the Examiner contends that *Eklund* anticipates each element of independent Claims 1 and 9. Applicants respectfully disagree. As recited in MPEP 706.02(IV), “for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly.” MPEP § 2131 Anticipation, clearly states that to anticipate a claim, the reference must teach every element of the claim. In addition, The United States Court of Appeals for the Federal Circuit recently held “that unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102.” *Net Moneyin, Inc., v. Verisign, Inc.*, 545 F.3d 1359, 1371 (Fed. Cir. 2008). The Examiner has not met his initial burden of proof to establish a prima facie case for the §102(e) rejection.

Regarding independent Claim 1, *Eklund* fails to disclose, “transmitting state control (timing and power offset adjustment) information based on a channel state to the subscriber station”. *Eklund* discloses a base station “command[ing] a timing advance and a power adjustment” to the subscriber station “[b]ased on the arrival time of the initial ranging request and the measured power of the signal.” Thus, *Eklund* fails to anticipate Claim 1.

Regarding independent Claim 9, *Eklund* fails to disclose “receiving state control information from the base station in response to the bandwidth request code” as recited independent Claim 9. The Examiner contends that *Eklund* teaches this limitation when “during initial access, the [Subscriber Station] performs initial power leveling and ranging using ranging request (RNG-REQ) messages transmitted in initial maintenance windows” (*Eklund*, page 102, col. 2, lines 4-7). However, “during initial access” is not the same as “in response to the bandwidth request code.” Thus, for at least this reason, *Eklund* fails to anticipate Claim 9.

Additionally, independent Claim 9 recites features similar to Claim 1. Therefore, *Eklund* also fails to anticipate independent Claim 9 for similar reasons discussed above with respect to independent Claim 1.

Notwithstanding the above, with respect to independent Claims 1 and 9, Applicants amend the claims to further clarify the present invention, as set forth above. Specifically, Applicants amend Claims 1 and 9 to recite a "ranging code" and a "ranging response," features

not disclosed in *Eklund*.

For the above reasons, Applicants respectfully submit that independent Claims 1 and 9 are in condition for allowance. Without conceding the patentability of the dependent claims, *per se*, Applicants believe they are also in condition for allowance for at least the above reasons. Accordingly, Applicants respectfully submit that all claims are allowable over *Eklund* and the rejections should be withdrawn.

Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicants' attorney at the number given below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul J. Farrell", written in a cursive style.

Paul J. Farrell
Reg. No. 33,494
Attorney for Applicants

THE FARRELL LAW FIRM, LLP
290 Broadhollow Road, Suite 210E
Melville, New York 11747
Tel: (516) 228-3565
Fax: (516) 228-8475